IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 435 OF 2006
IN
CRIMINAL APPEAL NO. 320 OF 2006

1. Imtiyaz Ahmed @ Lakhu Mohammed Israil Malik
2. Ayas Ahamad @ Pintu Israil Mailk

]Applicants (Ori.Accused No. 2 & 3)

versus

State of Maharashtra ..Respondents

Mr. S. V. Marwadi for the Applicants - Original Accused Nos. 2 and 3.

Mr. P.A. Pol, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
SMT. NISHITA MHATRE, JJ.

DATE : 23RD APRIL, 2007.

P.C.

1. Heard Mr. Marwadi, learned counsel for the applicants - original accused Nos. 2 and 3 and learned APP for the State.

2. This is an application for bail by the applicants - original accused Nos. 2 and 3 who have been convicted for offence under Section 302 r/w.

34 of IPC and 235(2) of Cr.P.C. The name of the deceased is Mohd. Hanif and the complainant is P.W. 1 Mohd. Rais I. Huq Ansari, brother of the deceased.

3. There are two eyes witnesses to the incident, complainant P.W. 1 Mohd. Rais I. Huq Ansari and P.W. 8 Bilal Ahamd Ansari. FIR has been lodged by P.W. 1 and in this regard, Mr. Marwadi contended that no reliance can be placed on the evidence of P.W. 8 Bilal Ahamd because even after seeing the ghastly incident, he simply remained and kept quiet for a period of 10 days and then his statement came to be recorded. So far as P.W. 1 Mohd. Rais is concerned, Mr. Marwadi contended that firstly, P.W. 1 Mohd. Rais has not stated anything about direct participation of the applicants - original accused Nos. 2 and 3 in the assault, secondly, story narrated by the P.W. 1 Mohd. Rais was inconsistent with the story narrated by P.W. 8 Bilal Ahamd, and, thirdly, it was contended by Mr. Marwadi that no weapons were recovered at the instance of applicants- original accused Nos. 2 and 3 and even if clothes have been recovered, they are not blood stained. He therefore

contended that because of these reasons the applicants - original accused nos. 2 and 3 were entitled for bail.

4. The learned APP on the other hand contended that there were as many as eight injuries on the person of the deceased Mohd. Hanif as per the evidence of Doctor P.W. 20 Rajaram Narayan Marathe and P.W. 8 Bilal Ahamd might not have come to give statement to the police because of fear of the accused and the ghastly nature of the assault, and, therefore, his evidence cannot be disbelieved, and, therefore, he prayed that the bail application was liable to be rejected.

5. In his evidence, P.W. 1 Mohd. Rais has stated that when one boy named Iliyas gave him information that all the three accused are assaulting Mohd. Hanif, his brother, he went to the spot and noticed that accused no.1 Chandmiya was having a big knife, he was assaulting deceased Mohd. Hanif by that knife and applicants - original accused nos. 2 and 3 were armed with sword and gupti respectively and they were assaulting his brother Mohd. Hanif, he then raised shouts and the

accused ran away. According to him further he had carried deceased to the hospital where the hospital authorities declared him dead. He has also lodged FIR. However, according to Mr. Marwadi non recovery of blood stained clothes of this witness in the aforesaid circumstances is highly suspicious circumstance disproving his presence at the time of the incident.

6. P.W. 8 Bilal Ahamd, the only other eye witness on the other hand has stated that on that day he was proceeding from Sitawadi at about 4.30 p.m. and he saw that Laku i.e. accused No.2 Imtiyaz and Pintu i.e. accused No.3 Ayas caught hold of deceased Mohd. Hanif. Accused No.1 was armed with knife; he was assaulting the deceased by that knife, he does not say that applicants - original accused nos. 2 and 3 were inflicting any blows to the deceased. The role attributed to the applicants - original accused Nos. 2 and 3 is that they were holding the deceased only. Then, he admitted that though the incident is of 18.4.2004 his statement came to be recorded on 28.4.2004 and that one person Gabbar has threatened him not to speak about the incident. He admitted that accused

has not given any threats to him and that from 18.4.2004 to 28.4.2004 he was attending his duty in the karkhana which is at a walking distance of 5 minutes from the scene of the offence and the house of the deceased Mohd. Hanif was only at the walking distance of 2-3 minutes from the scene of the offence. The conduct of P.W. 8 Bilal Ahamd does not appear to be natural, at least, at this stage of bail.

7. There is a difference between versions of assault between P.W. 1 Mohd. Rais and P.W. 8 Bilal Ahamd. Admittedly, no weapons are recovered at the instance of the applicants - original accused Nos. 2 and 3.

8. Clothes of accused No.3 Ayas are recovered by the police under panchnama on 23.6.2004 i.e. after about more than two months and 5 days of the incident, under Section 27 of the Evidence Act. No blood stains are noted on his clothes and there is no mention about the same in the panchnama Exhibit 35. Similarly, clothes of accused No.2 Imtiyaz are recovered on the same day i.e. on 23.6.2004 and there are no blood stains noted on his clothes.

9. We have verified from the learned APP whether there are any criminal antecedents against the applicants - original accused Nos. 2 and 3. We are informed by the learned APP that there are no criminal antecedents. In view of this, the applicants - original accused Nos. 2 and 3 be released on their P.R. bond of Rs.15,000/- (Rupees Fifteen Thousand) each with one or two solvent sureties, each, in the like amount. They will attend the concerned police station every fortnight for a period of six months and thereafter every alternate month till the appeal is disposed of. Their substantive sentence is suspended pending appeal. They should pay fine, if any, before they are released on bail. Application disposed of accordingly.

(SMT. NISHITA MHATRE, J.) (D.G. DESHPANDE, J.)